

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ **MAR 15 2013** ★

LONG ISLAND OFFICE

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BARBARA E. KERN-GUERRIERE, and
DR. JOHN T. GUERRIERE,

Plaintiffs,

– against –

NASSAU COUNTY, et al.,

Defendants.
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ORDER
11-CV-4991 (JFB)(ETB)

JOSEPH F. BIANCO, District Judge:

By letter dated March 6, 2013, plaintiff Barbara Kern-Guerriere advised the Court that she wishes to withdraw the case without prejudice. The Court has received no response from the defendants concerning this request.

The Court has considered all of the relevant factors applicable to this request. *See Blaize-Sampeur v. McDowell*, 05-CV-4275 (JFB)(ARL), 2007 WL 1958909, at *3 (E.D.N.Y. June 29, 2007) (discussing factors in determining whether to allow dismissal without prejudice under Rule 41(a)(2)). In light of plaintiff's situation with regard to the aftermath of Hurricane Sandy and the early juncture of this case, the Court concludes, under its discretionary power pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, that it is appropriate to allow her to voluntarily dismiss the case without prejudice. There is no indication of bad faith or lack of diligence in bringing this motion; rather, plaintiff has explained her personal situation in prior submissions to the Court and her difficulties in proceeding with the action at this time.

However, if plaintiff does re-initiate the action in the future, defendants who have already

filed a motion to dismiss will be permitted to renew their motions to dismiss by letter motion to the Court, which simply incorporates by reference their prior motions. This will avoid any unnecessary duplicative expense from re-litigation, or any other prejudice to the defendants from re-initiation of the action. Accordingly, the case is dismissed without prejudice, pursuant to Rule 41(a)(2).¹ The Clerk of the Court shall close the case.

SO ORDERED.

JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: March 15, 2013
Central Islip, New York

¹ The case also must be dismissed without prejudice as to Dr. John T. Guerriere because he is deceased and Ms. Kern-Guerriere cannot proceed on his behalf in her individual capacity.